

THE STEAMBOATERS,
OREGON RIVERS COUNCIL
AND
OREGON TROUT, INC.,

DOUGLAS COUNTY, INTERVENOR

IBLA 93-129

Decided November 17, 1994

Appeal from decisions by the Oregon State Director, Bureau of Land Management, denying protests of a decision by the Roseburg District Manager adopting the North Umpqua River Management Plan. OR No. 8350 (933).

Affirmed.

1. Federal Land Policy and Management Act of 1976: Land Use Planning--Public Lands: Administration--Wild and Scenic Rivers Act

A BLM decision to implement a wild and scenic river management plan including a FONSI decision will be affirmed on appeal if the decision is based on a consideration of all relevant factors, including an evaluation of the impacts on fisheries resources, is supported by the record, and accords with statutory directives, absent a showing of clear reasons for modification or reversal.

2. Environmental Quality: Environmental Statements--National Environmental Policy Act of 1969: Finding of No Significant Impact

An EIS need not be prepared if BLM finds, based on an adequate EA, that a proposed action will produce no significant impact. The Board will affirm a FONSI if the record establishes that a careful review of environmental problems has been made, all relevant environmental concerns have been identified, and the final determination that the impact is insignificant is reasonable in light of the environmental analysis.

3. Environmental Quality: Environmental Statements--Federal Land Policy and Management Act of 1976: Land Use Planning--Public Lands: Administration--National

Environmental Policy Act of 1969: Finding of No Significant Impact--
Wild and Scenic Rivers Act

A party challenging a FONSI finding must show that the determination was premised on a clear error of law, a demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the action for which the analysis was prepared. Mere differences of opinion provide no basis for reversal of BLM's decision if it is reasonable and supported by the record on appeal.

APPEARANCES: Bill Kloos, Esq., Eugene, Oregon, for appellants, The Steamboaters, Oregon Rivers Council, and Oregon Trout, Inc.; Ronald S. Yockim, Esq., Roseburg, Oregon, for Intervenor Douglas County; Roger W. Nesbit, Esq., Office of the Solicitor, U.S. Department of the Interior, Portland, Oregon, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

On July 28, 1992, the Roseburg District Manager, Bureau of Land Management (BLM), adopted the North Umpqua Wild and Scenic River Management Plan (River Plan) by approving a Decision Notice and Finding of No Significant Impact (FONSI) based on an environmental assessment (EA). Protests were filed with BLM's State Director. 1/ By separate decisions dated

October 6, 1992, the State Director denied protests filed by The Steamboaters, Oregon Rivers Council, and Oregon Trout, Inc., who jointly appealed the State Director decisions to the Board. 2/

The Board of County Commissioners of Douglas County, Oregon (County), moved to intervene in this proceeding, citing its longstanding interest in the management of the river and its active participation in the development of the plan. By order dated March 24, 1993, the Board granted Douglas County leave to intervene.

The North Umpqua River was designated as a recreational river by Congress in the Omnibus Oregon Wild and Scenic Rivers Act of 1988, P.L. 100-557, 102 Stat. 2782 (1988), 16 U.S.C. § 1274(a)(95) (Supp. I 1989). The statutory provision requiring a management plan for the river states:

1/ The Wild and Scenic River Corridor also includes lands administered by the United States Forest Service (FS). Therefore, the plan was jointly prepared by BLM and FS. On July 28, 1992, the Supervisor of the Umpqua National Forest signed a similar decision providing for a right of appeal within the Forest Service. The appeal to the Forest Service is pending.

2/ We find no authority for requiring the intermediate step of the filing of a protest with a State Director and the State Director rejection of the protest before appeal to this Board. The Roseburg District Manager decision should have described the procedure for appeal to this Board rather than the procedure for filing a protest for State Director review.

For rivers designated on or after January 1, 1968, the Federal agency charged with the administration of each component of the National Wild and Scenic Rivers System shall prepare a comprehensive management plan for such river segment to provide for the protection of the river values. The plan shall address resource protection, development of lands and facilities, user capacities, and other management practices necessary or desirable to achieve the purposes of this chapter. The plan shall be coordinated with and may be incorporated into resource management planning for affected adjacent Federal lands. The plan shall be prepared, after consultation with State and local governments and the interested public within 3 full fiscal years after the date of designation. Notice of the completion and availability of such plans shall be published in the Federal Register.

16 U.S.C. § 1274(d)(1) (1988).

The statute further provides that:

Each component of the national wild and scenic rivers system shall be administered in such a manner as to protect and enhance the values which caused it to be included in said system without, insofar as is consistent therewith, limiting other uses that do not substantially interfere with public use and enjoyment of these values. In such administration primary emphasis shall be given to protecting its esthetic, scenic, historic, archaeologic, and scientific features. Management plans for any such component may establish varying degrees of intensity for its protection and development, based on the special attributes of the area.

16 U.S.C. § 1281(a) (1988).

Under the Act, BLM's River Plan must be coordinated with and may be incorporated into resource management planning for adjacent Federal lands. BLM's River Plan is slated to be made a part of BLM's Roseburg District Resource Management Plan (RMP) (River Plan at 11). ^{3/}

In his July 28, 1992, decision, the District Manager adopted the action described as Alternative C in the EA as the management option for the 33.8-mile segment of the North Umpqua River. Alternative C allows a moderate increase in recreational boating use and is expected to "maintain and or improve the ORV's [outstandingly remarkable values] of fisheries, water, recreation, scenery, and cultural [sic]" (EA at 65). ^{4/} The District

^{3/} BLM's River Plan states that the Forest Plan "provides direction for all resource management programs, practices, uses, and protection measures on the Umpqua National Forest" (River Plan at 11).

^{4/} Under Alternative A, impacts on resources would have been least, but recreational boating would have been "seriously restricted," with fewer people enjoying a recreational experience. Alternative B, the "no action" alternative, would have maintained recreational use of the corridor subject to restriction only by current voluntary boating guidelines and existing

Manager found that Alternative C provided the best combination of management options to meet the requirement of protecting and enhancing all outstandingly remarkable values of the river, responded adequately to public interest, maintained the existing character of the area, and provided a range of uses appropriate for a wild and scenic river (Decision at 2).

Appellants submitted separate protests, and, as previously noted, the State Director denied their protest in separate October 6, 1992, decisions. In its initial protest Steamboaters challenged the adequacy of the River

Plan protection of fisheries and water quality, questioned the use allocation between rafting and fishing, and included various suggestions for River Plan improvement. Steamboaters supplemented its protest with a copy of its appeal of the July 28, 1992, Umpqua Forest Supervisor decision. In that document, Steamboaters contended that the River Plan failed to adequately protect water quality and fishery resources and argued that an environmental impact statement was required. In his decision denying Steamboaters' protest, the State Director addressed the arguments presented in Steamboaters' August 11, 1992, protest letter but did not address those found in the supplemental protest.

On appeal appellants have filed a joint statement of reasons (SOR) and a supplemental SOR. 5/ The arguments in the SOR and supplemental SOR are essentially the same as those in Steamboaters' supplemental protest. BLM has responded to the SOR with a point-by-point discussion of the arguments raised by appellants.

Appellants argue that the lands adjacent to the river corridor cannot be managed for timber harvest, as provided in the Resource Management Plan, and meet the "protect and enhance" criterion of 16 U.S.C. § 1281(a) (1988). They note that adverse impacts of timber harvesting on fisheries and water quality were addressed in the EA and assert that the greatest shortcoming found in the River Plan is a failure to incorporate timber management policies for adjacent lands that "eliminate adverse impacts to the fishery" (SOR at 4).

In response, BLM notes that the statute allows coordination of management decisions regarding land inside and outside the river corridor, and a river management plan may be made a part of resource management plans for adjacent Federal lands. It argues that under the statute, resource management decisions pertaining to adjacent lands need not be made a part of river management plans, and states that the River Plan will be made a part of BLM's Roseburg District Resource Management Plan, which provides specific guidelines for timber management outside the river corridor. BLM

fn. 4 (continued)

capacity of facilities to accommodate recreation users. Alternative B1 would have had slightly more impact on the resources than Alternative A because it envisioned a 20-percent increase in boaters. See EA at 56-63. 5/ Douglas County contends that the appeal is untimely because it was filed on Nov. 3, 1992, and the decision adopting the River Plan was issued on July 28, 1992. The appeal, taken from the State Director's Oct. 6, 1992, denial of appellants' protests, is timely.

further asserts that the statute envisions a coexistence of various uses, and accords administrative discretion as to how various values should be protected in a given area, and thus there is no statutory mandate that all adverse impacts upon water quality and fisheries must be eliminated.

Appellants also contend that BLM erred by failing to adopt procedures to mitigate adverse impacts caused by Pacific Power & Light (PP&L) hydroelectric projects. Appellants assert that BLM's planning documents acknowledge the fact that hydroelectric projects have an adverse effect on water quality and fishery resources, but the River Plan sets no rules under which hydroelectric projects facilities must operate.

In its response, BLM states that the PP&L projects (which lie outside the river corridor) are licensed by the Federal Energy Regulatory Commission (FERC), the relicensing process is underway, and PP&L is conducting extensive research to identify issues of concern which may affect river resources. BLM notes that the River Plan refers to the PP&L projects, which will be managed to meet Forest Service and BLM objectives, and states that a more intensive management initiative would be inappropriate during the relicensing procedure. BLM states that appellants' contention that it has no policy with respect to PP&L facilities is inaccurate and notes further that 16 U.S.C. § 1278(a) (1988) specifically provides a separate process for addressing the impact of FERC-licensed projects on designated wild and scenic rivers.

Appellants further contend that the River Plan actually proposes uses which are recognized in the EA as adversely impacting a declining fishery resource. They state that after recognizing in the EA that increased recreational use will adversely impact fishery resources, BLM has adopted a River Plan that fails to specify that protection and enhancement of the fishery resource has priority over the recreational use. They also contend that neither the EA nor the River Plan contain specific proposals for protecting and enhancing fishery resources.

In response, BLM states that competing interests (including recreational use versus fishery resources) had been evaluated before it concluded that there was no "high risk of adverse consequences to the fisheries resources" (EA at 84). It noted that it did not anticipate a large increase in recreational boating use, and that, in any event, it would initiate controls to mitigate possible impacts. BLM's River Plan sets out BLM's plan to maintain, protect, and restore habitat. Counsel for BLM admits, however, that some of the factors affecting the resource, such as exploitation by fishermen, predation, disease, agricultural practices, and urban growth, are beyond BLM's control. BLM states that, for this reason, its management objectives statement was more conservative than the formula suggested by appellants: protecting and enhancing fishery stocks to meet or exceed population goals identified by the Oregon Department of Fish and Wildlife. Finally, BLM notes that on pages 28-29 of the River Plan it specifies that an interdisciplinary team, which will include a fishery biologist, will conduct an inventory and analysis to determine the need and scale of habitat enhancement plans.

Finally, appellants contend that an environmental impact statement (EIS) must be prepared before adopting the River Plan because fisheries resources are at risk and in decline.

BLM responds that no significant impacts were found during the evaluation documented in the EA. It states further that if fishery resources were at risk or in decline, those circumstances would not be exacerbated by the adoption of the River Plan. BLM states that the River Plan is to be made a part of the Roseburg RMP and the Forest Plan, and that the EIS prepared for each of those plans includes an evaluation of the impact of timber harvest outside the North Umpqua River corridor on the river fisheries.

[1] BLM is authorized by sections 102(a)(7) and 302(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1701(a)(7) and 1732(a) (1988), to manage the public lands for multiple use, *i.e.* a "combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable * * * resources, including * * * wildlife." Absent a showing of clear reasons for modification or reversal, a BLM decision implementing a resource management plan will be affirmed when the decision is based on a consideration of all relevant factors and is supported by the record. Lands of Sierra, 125 IBLA 15, 20 (1992); Animal Protection Institute of America, 117 IBLA 208, 216 (1990), and cases there cited.

[2, 3] An EIS need not be prepared if, on the basis of an adequate EA, BLM finds that a proposed action will produce "no significant impact." A FONSI will be affirmed on appeal if the record shows that a careful review of environmental issues has been made, relevant environmental concerns have been identified, and the final determination is reasonable. Appellants bear the burden of proving error. Powder River Basin Resource Council, 124 IBLA 83, 91 (1992).

Appellants support their arguments regarding protection of fisheries resources by reference to the statutory directive that "[e]ach component of the national wild and scenic river system shall be administered in such a manner as to protect and enhance the values which caused it to be included in said system, without, insofar as is consistent therewith, limiting other uses that do not substantially interfere with public use and enjoyment of these values." 16 U.S.C. § 1281(a) (1988). This "protect and enhance" criterion is not an absolute, and must be tempered by recognition of the need for coexistence with other uses. BLM recognizes that increased recreational use may impact the fisheries resources, but the River Plan calls for an overall improvement of fish and fish habitat by implementation of measures to revegetate riparian and tributary areas (River Plan at 14). The overall program set out in the River Plan is certainly commensurate with the statutory criterion.

The EA explains that prior human activities have had a negative impact on the fisheries resource in the North Umpqua River basin. These activities include hydroelectric power projects that changed gravel deposition patterns, timber harvests on tributary watersheds, and construction of a

major highway adjacent to the river. The EA acknowledges that the fisheries resource has been degraded and may be declining as a result of these past land use practices. The above listed factors, which are present in the entire watershed, are poorly understood, but are being studied, and the EA recognizes that future activities in the watershed should be designed to prevent further degradation and allow restoration (EA at 28).

Review of the EA and the River Plan indicates that a diligent evaluation of all pertinent factors supported the conclusion that the fishery resource, a congressionally recognized "outstandingly remarkable value"

could not be considered to be thriving. BLM's planning initiatives reflect full cognizance of this fact and are designed to reverse the decline. BLM's evaluation of Alternatives A through C supports its conclusion that no significant degradation of the fisheries resource will result from moderate fluctuations in recreational boating use. ^{6/}

We recognize that appellants hold a different opinion and do not agree with BLM's methodology or findings. However, they have fallen considerably short of demonstrating a violation of statutory directives or mandates, or that BLM has abused the discretionary authority afforded by the Wild and Scenic Rivers Act. Therefore, we find that appellants have shown no error which would justify modification or reversal of BLM's decision. High Desert Multiple Use Coalition, 124 IBLA 129 (1992); William A. Franklin, 121 IBLA 37 (1991); Southern Utah Wilderness Alliance, 114 IBLA 326 (1990).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

I concur:

James L. Burski
Administrative Judge

^{6/} The EA states that recreational use, such as swimming, angling, and boating, and illegal uses such as poaching can have direct negative impacts on fisheries (EA at 79). However, the contemplated activity within the corridor was expected to have little potential for major consequence (EA at 78). The primary factor affecting the fisheries habitat was the cumulative effect of timber harvesting and road construction within the watershed but outside the corridor (EA at 78, 81).